

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

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HSC

14 November 1975

Mr. A. Searle Field
Staff Director
Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515

Attention: Emily Sheketoff

Dear Mr. Field:

This is a response to the question as to whether the War Powers Act would prohibit covert paramilitary operations. The question was posed by Congressman Johnson during Director Colby's testimony before the House Select Committee on Intelligence on August 4, 1975, and was confirmed in writing by the Committee staff on August 19. Please bring this letter to the attention of Congressman Johnson.

As you are aware, the Act, which became effective on November 7, 1973, over Presidential veto, does not prohibit military or paramilitary operations. It merely requires Presidential consultation with Congress before the commitment of U.S. Armed Forces into hostilities and Presidential reporting to Congress following such a commitment. Specifically, the Act provides that:

... [t]he President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.
[emphasis added]

If the President, without a declaration of war or other prior congressional authorization, takes significant action committing U.S. Armed Forces into hostilities abroad or places substantially increased U.S. combat forces on foreign territory, the Act further requires that he report to Congress within 48 hours. Thereafter, the President must terminate the use of United States Armed Forces if Congress so orders or if Congress fails to act within 120 days.




Moreover, the Act's reporting procedures clearly do not apply to paramilitary activities or other covert action. The Act had its genesis in the aftermath of the Cambodian incursion of 1970 and its purpose is to impose requirements with respect to the use of Armed Forces. The Act literally refers to "Armed Forces," and this term was taken in congressional debate to mean conventional military units and uniformed personnel. An amendment which would have broadened the Act to cover paramilitary activities of the type undertaken by the CIA in Laos was offered by Senator Eagleton and was rejected by a vote of 53 to 34, Amendment 366 to S. 440. Under that amendment, the War Powers Act would have covered

... [a]ny personnel employed by, under contract to, or under the direction of any department or agency of the U.S. Government either


(a) actively engaged in hostilities in any foreign country;
or

(b) advising any regular or irregular military forces engaged in hostilities in any foreign country.

For these reasons, it is our opinion that the War Powers Act neither prohibits covert paramilitary operations nor does it require that such operations be reported to Congress. If, however, the President wishes to employ covert operations abroad, section 32 of the Foreign Assistance Act of 1974 requires that he determine that each operation is important to the national security of the United States and that he report, in a timely fashion, a description and scope of such operation to appropriate committees of the Congress, including the Committee on Foreign Relations of the Senate and the International Relations Committee of the United States House of Representatives. In total, six committees of the Congress are now being briefed on covert operations. 

Thank you for this opportunity to submit a statement for the record. I am sure you realize that these comments reflect the position of the Agency and are not definitive with respect to either the position of the President or any other agency of the Federal Government.

Sincerely,


John S. Warner
General Counsel